IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

MFA.No. 1208 of 1995()

OPMV.2259/1991 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOZHIKODE
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APPELLANT/PETITIONERS 1 TO 4:

1.JAMEELA, W/O.C.V.NOOH,PURATHATTIL HOUSE, P.O.PUTHIYANGADI, KOZHIKODE DISTRICT.

2.NUSRATH, AGED 5 YEARS, D/O.C.V.NOOH, PURATHATTIL HOUSE, P.O.PUTHIYANGADI (MINOR GIRL REP. BY THE 1ST PETITIONER)

3.JUNAIS, AGED 3 YEARS, S/O.C.V.NOOH, PURATHATTIL HOUSE, P.O.PUTHIYANGADI (MINOR BOY REP. BY THE 1ST PETITIONER)

4.UMAIR, AGED 2 MONTHS,S/O.C.V.NOOH, DO. DO. (MINOR BOY REP. BY 1ST PETITIONER)

BY ADV. SRI.MVS.NAMBOOTHIRY
SRI.P.V.KUNHIKRISHNAN

RESPONDENTS/RESPONDENTS AND 5TH PETITIONER:

1.EDODIYIL PREMAN,S/O.KUNHIRAMAN, THURAYOOR AMSOM DESOM, KOZHIKODE.

2.P.M.MAMMU,S/O.MUHAMMED MUSALIAR, PUTHIYA PURAYIL HOUSE, MATTANNUR, KOZHIKODE DISTRICT.

3.NEW INDIA ASSURANCE CO. LTD., BRANCH THALASSERY.

4.AJAYAN,AGED 32 YEARS, S/O.KUMARAN CHAKKILVALAPPIL PINARAYI AMSOM DESOM THALASSERY.

5.K.VELAYUDHAN,AGED 55 YEARS, S/O.KANARI SANGAMAM HOSPITAL ROAD, THALASSERY.

6.UNITED INDIA INSURANCE CO. LTD., HOSPITAL ROAD, THALASSERY.

7.PATHUMMA, AGED 50 YEARS, D/O.BEERANKUTTY, VADAKKE KARAT, MORIKKARA P.O., KAKKODI.

BY ADV. SRI.SUNNY MATHEW FOR R7
SRI.SREELAL N.WARRIER FOR R6
SRI.THOMAS MATHEW NELLIMOOTTIL FOR R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.1208 OF 1995 (F)

Dated this the 25th day of May, 2007

J U D G M E N T

KOSHY,J.

This appeal is filed by the claimants in O.P.(MV). No.2259/1991 on the file of the Motor Accidents Claims Tribunal, Kozhikode. Husband of the 1st claimant while travelling in a bus bearing registration No.KL-13/1224 from Tellicherri to Calicut died when a lorry with registration No.KLZ 8096 driven by the 1st respondent insured by the 3rd respondent Insurance company hit the bus. Tribunal found that even though driver of the lorry was negligent and he was driving the vehicle in the rash and negligent manner there is contributory negligence on the part of the deceased. Report shows that the bus was not damaged and lorry has not actually hit the bus but injury is happened mainly because of putting his head outside the bus. But at the same time it was found that the driver of the lorry was in a rash and negligent manner.

Therefore 30% contributory negligence was fixed on the deceased and 70% negligence was put on the lorry driver and the Insurance company was directed to pay 70% of the awarded amount with 12% interest on the date of application. With regard to the quantum of compensation as accident occurred on 5.6.1991 an amount of Rs.1,61,000/- was awarded with interest. The main contention raised by the appellant is that the deceased was a head load worker and he was getting Rs.2,000/- per month. Ext.A2 is the identity card. But in the absence of evidence, tribunal has taken only Rs.1,500/- as the income and for a manual worker it cannot be taken to be too low so as to get interference in an appeal proceedings. In any event, he was 31 years old and 20 was taken as the multiplier which is on the higher side. Considering the total amount and interest awarded, we are of the opinion that no interference is required in the above award and hence appeal is dismissed.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.1208 OF 1995 (F)

J U D G M E N T

25th May, 2007